Supreme Court, U.S.
FILED
99 1905 MAR 27 2000
OFFICE OF THE CLERK

No. _____

In The

**SUPREME COURT OF THE UNITED STATES**

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ABD EL-HAMID A. EL-FADLY,

Petitioner

v

UNITED STATES OF AMERICA,

Respondent

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**On Petition For A Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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ABD EL-HAMID A. EL-FADLY
Petitioner in Pro Per
18535 Mayall St., #G
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32pp

## QUESTIONS PRESENTED

1. Petitioner is **entitled** to a tax refund according to the Tax Code (26 U.S.C.). The U.S. Attorneys tried to cheat, mislead and lie to petitioner and the Court to **prevent** petitioner from getting that tax refund for no legitimate reason. Is that action not **Fraud** by the U.S. Attorneys?

2. Is it not true? For a case like this, will have **impact on the public**, because the U.S. Attorneys do not apply the Tax Code (26 U.S.C.) when it is in the favor of the taxpayers, and the Court rules for those U.S. Attorneys.

3. Petitioner noticed from the U.S. Attorneys' pleadings to the court that they do not want to return to the taxpayers any extra taxes when it was collected by the IRS by mistakes. Therefore, when those U.S. Attorneys go to the court they put in their pleading any section from the Tax Code (26 U.S.C.) even that section does not belong to the lawsuit and they pretend that they have a good point in defending the government.

   Moreover, when those U.S. Attorneys go to the court with that unprofessional work, they win. Please note that this is very obvious in pro se lawsuits.

   It not true, what those U.S. Attorneys are doing is not correct? Also, can the Supreme Court help to eliminate completely this unfair action by the U.S. Attorneys from our society?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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**IN THE**

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1999**

## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment, and the order of the District Court. Also, the memorandum, and the order of the Court of Appeals below.

## OPINIONS BELOW

The opinion of the District Court, and the United States court of appeals appear at Appendix A, B, C, and D, pages 7 to 23.

## JURISDICTION

1. The memorandum of the United States Court of Appeals which denied petitioner's case was filed on October 1, 1999 (please see Appendix C, at page 17).

2. The order of the United States Court of Appeals which denied petitioner's petition for rehearing filed on December 27, 1999 (please see Appendix D, at page 23).

## STATEMENT OF THE CASE

Petitioner is entitled to a tax refund according to the Tax Code (26 U.S.C.). The U.S. Attorneys did not want to give petitioner that tax refund for **Unknown Reason**. Therefore those U.S. Attorneys were cheating, misleading, and lying to Petitioner to convince him that he is not entitled to that tax refund (and **this is a FRAUD** by the U.S. Attorneys). (The reason for the accusation of Fraud is the U.S. Attorneys knew that petitioner is entitled to that tax refund and they were trying to prevent him from getting that tax refund for no legitimate reason.) Also those U.S. Attorneys were cheating, misleading, and lying to the court too. Moreover one of the U.S. Attorneys did not protect Petitioner's personal records intentionally from the public eyes.

However, the District Court, and the Court of Appeals ruled in favor of the government for **Unknown Reason**. Also both the District Court and the Court of Appeals **ignored** the applicable Tax Code (26 U.S.C.) section.

In addition the Court of Appeals **Ignored** the tax code section which petitioner presented to the Court of Appeals to show the Court of Appeals that he is indeed entitled to that tax refund. Moreover the Court of Appeals also did not discuss in its memorandum what is wrong with that section of the Tax Code (26 U.S.C.) which petitioner presented to the Court of Appeals.

Please also note that the U.S. Attorneys never said in their pleadings to the Court of Appeals that the section of the Tax Code (26 U.S.C.) which petitioner presented to the Court of Appeals is not applicable to this lawsuit.

## REASONS FOR GRANTING THE WRIT

Petitioner is entitled to the tax refund by the Tax Code (26 U.S.C.). On the other hand, the decision of both courts were based on a wrong section of the Tax Code (26 U.S.C.) which is not applicable to petitioner's case.

Please also note that petitioner presented to the Court of Appeals the correct section of the Tax Code (26 U.S.C.) which made petitioner entitled to that tax refund and explained it in detail but the Court of Appeals somehow did not want to use it for **unknown reason**.

Also, it is very **important** to all tax payers to pay their taxes according to the Tax Code (26 U.S.C.) and not according to the U.S. Attorneys preferences.

## WHAT PETITIONER WANTS THE SUPREME COURT TO DO

To reverse the decision of the Court of Appeals to enable petitioner to do the following:

1. To use the **Head of Household** filing status for the **1991** and **1992** tax years.

2. Petitioner requests from the Supreme Court to award him the reasonable amount of Monetary Damages due to the damage which was done to him by the U.S. Attorney because the U.S. Attorney put the petitioner's personal records in the public eyes intentionally, and without any legitimate reason.

3. Petitioner requests from the Supreme Court to keep out Petitioner's personal records (all the Exhibits that were filed in the court by Petitioner or Defendant) from the public eyes.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ABD EL-HAMID EL-FADLY

DATE: March 24, 2000

APPENDIX A

FILED
CLERK, U.S. DISTRICT COURT
JUN 16 1998
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 18 1998
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| ABD EL-HAMID A. EL-FADLY, Plaintiff, v. UNITED STATES OF AMERICA, Defendant. | CV 97-3681 ER (RNBx) JUDGMENT |

This action came on for hearing before the Court, Honorable Edward

Rafeedie, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that Plaintiff Abd El-Hamid A. El-Fadly shall take nothing, that the action be dismissed on the merits, and that Defendant United States of America recover of the Plaintiff its costs of action.

Dated: Jun 16 1998

"s/: Edward Rafeedie"
EDWARD RAFEEDIE
Senior United States District Judge

APPENDIX B

FILED
CLERK, U.S. DISTRICT COURT
JUN 16 1998
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 18 1998
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | | |
|---|---|---|
| ABD EL-HAMID A. EL-FADLY, | ) | CV 97-3681 ER (RNBx) |
| Plaintiff, | ) | ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY |
| v. | ) | JUDGMENT; DENYING PLAINTIFF'S REQUEST |
| UNITED STATES OF AMERICA, | ) | TO SEAL RECORDS; AND DENYING PLAINTIFF'S |
| Defendant. | ) | REQUEST FOR SUBSTITUTION OF DEFENDANT'S COUNSEL |

The Court has read and considered the papers filed in connection with

Defendant United States Motion for Summary Judgment, and HEREBY GRANTS the motion for the following reasons.

[1] At the outset, the Court notes that the parties have stipulated that the sole remaining issue in this action is whether the Plaintiff was entitled to claim a head of household filing status for the 1991 and 1992 tax years. See Stipulation and Order Dated March 16, 1998.

[2] Under section 2(b) of the Internal Revenue Code, a taxpayer is considered a "head of household" if such individual maintains as his home a household which constitutes for more than one-half of such taxable year, the principal place of abode for the taxpayer's child. 26 U.S.C. § 2(b). The statute also contemplates, however, that where the "nonpermanent failure to occupy the common abode" is

"by reason of education," this absence shall be considered a "temporary absence due to special circumstances." 26 U.S.C. § 2(b).

[3] The Court finds that the Plaintiff does not qualify for "head of household" filing status for the tax years 1991 and 1992. To begin with, it is undisputed that the Plaintiff"s son, Amrow, did not reside with the Plaintiff during the tax years 1991 and 1992. In fact, the evidence uniformly indicates that Amrow has lived with his mother, Laila El-Fadly, in Egypt since 1984. See Plaintiff's Decl. at 3.

[4] In addition, the Court finds no genuine issue of material fact as to whether Amrow s failure to occupy the Plaintiff's abode during the 1991 and 1992 tax years was a "temporary absence due to special circumstances." First,

there is no evidence to support the Plaintiff's contention that Amrow's absence was "temporary." It is undisputed that on February 18, 1988, the American courts awarded Laila El-Fadly the sole right to determine the residency of Amrow. See Plaintiff's at 2. She decided that Amrow would reside with her in Egypt. See Plaintiff's Decl. at 2. The record is devoid of any evidence that Laila El-Fadly ever intended to permit Amrow to reside with the Plaintiff. In addition, the Plaintiff has admitted that he never challenged Laila El-Fadly's right to determine the residency of Amrow. See Plaintiff's Decl. at 2. Notably, Amrow has lived in Egypt since 1984 and continues to live there today. See Plaintiff's Decl. at 3. These facts uniformly indicate that Amrow's failure to reside with the Plaintiff in the 1991

and 1992 tax years was a permanent absence, not a temporary one. Accordingly, although the Plaintiff claims that he maintained his household in anticipation of Amrow's return, Amrow's permanent absence prevents the Plaintiff from claiming a head of household filing status under I.R.C. § 2(b).

[5] The Court further finds no genuine issue of material fact as to whether Amrow's absence was "due to special circumstances." The Plaintiff has presented no evidence in support of his claim that Amrow resided in Egypt, rather than with the Plaintiff, because Amrow was receiving his education in Egypt. Rather, the evidence indicates that Amrow resided in Egypt during the 1991 and 1992 tax years because his mother had the legal right to determine his residency,

and she decided that he would reside in Egypt. See Plaintiff's' Decl. 3. The fact that Amrow was also being educated in Egypt was simply a by-product of the fact that he was living in Egypt. Therefore, the fact that Amrow was educated in Egypt during the 1991 and 1992 tax years does not mean that his absence from the Plaintiff's household was "by reason of" Amrow's education. Accordingly, Amrow's absence was not attributable to "special circumstances."

[6] The Court notes that the Plaintiff has attempted to raise a genuine issue of material fact on this point by claiming that under Egyptian law, all custodial rights over Amrow belonged to the Plaintiff, not to his ex-wife. The Court rejects this line of argument entirely. Even if the Court were to assume that the Plaintiff had the right to determine

Amrow's residency, there is no evidence that the Plaintiff ever attempted to exercise this right. Rather, the evidence indicates that the Plaintiff was content to permit his son to reside in Egypt with his mother. See Plaintiff's Decl. at 3. As such, the Plaintiff's purported custodial right over Amrow is insufficient to raise a genuine issue of material fact as to whether Amrow's absence was nonpermanent or attributable to special circumstances.

[7] The Court further finds no merit to the Plaintiff's contention that "equity" entitles him to claim a "head of household" filing status for the 1991 and 1992 tax years based on the alleged fact that the IRS permitted him to claim this filing status for the 1990, 1994 and 1995 tax years. Even if the Court were to assume these alleged facts to be true,

these facts are wholly irrelevant to whether the Plaintiff was entitled to claim this filing status for the 1991 and 1992 tax years. "It is well settled that the Commissioner's failure to challenge a taxpayer's treatment of an item in one taxable year is irrelevant in the determination of the proper treatment of a similar item in a different taxable year." Little v. C.I.R., 106 F.3d 1445, 1453 (9th Cir. 1997); see Yeaman v. United States, 584 F.2d 322, 326 (9th Cir. 1978).

[8] By way of his opposition to this motion for summary judgment, the Plaintiff has asked the Court to seal the Plaintiff's tax returns and any other personal records on the ground that these documents are confidential records. The Court DENIES this request for the following reasons. In civil actions, there is a strong common law "presumption

of access" to judicial documents based on the need for federal courts to have a measure of accountability and for the public to have confidence in the administration of justice. Valley Broadcasting Co. v. United States Dist. Court, 798 F.2d 1289, 1294 (9th Cir. 1986). Although this presumption of access may be overcome by a strong showing of a personal privacy interest, no such privacy interest is present in this case because the Plaintiff's tax records are not confidential or privileged materials. See Heathman v. United States District Court, 503 F.2d 1032, 1035 (9th Cir. 1974). Furthermore, the Court finds that even if these documents were confidential materials, the Plaintiff has waived his right to protect these documents by placing his tax returns at issue through this

litigation. See Chevron v. Pennzoil, 974 F.2d 1156, 1162 (9th Cir. 1992). As such, the Plaintiff's personal privacy rights are greatly outweighed by the public's right of access.

[9] By way of his opposition to this motion for summary judgment, the Plaintiff has also asked the Court to order substitution of the Defendant's attorneys. The Court DENIES this request for the following reasons. To begin with, the Court finds that a request of this nature should be presented through a properly noticed motion -- not in an opposition to summary judgment. Moreover, the Court has not found, and the Plaintiff has not identified, any legal authority for the Court to order the appointment of IRS attorneys in this action. Furthermore, the Court finds that the Plaintiff has wholly failed to

substantiate his allegations that the U.S. Attorneys in this action have "attempted to win this lawsuit by hiding facts and presenting the records in a misleading way."

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by United States mail or by telefax, copies of this Order on counsel for the parties in this matter.

Dated: Jun 16 1998

"s/: Edward Rafeedie"

EDWARD RAFEEDIE
Senior United States District Judge

APPENDIX C

FILED
OCT 1 1999
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| ABD EL-HAMID A. EL-FADLY, Plaintiff-Appellant, v. INTERNAL REVENUE SERVICE, Defendant-Appellee. | No. 98-56348<br>D.C. No. CV 97-3681 ER<br>MEMORANDUM[1] |

Appeal from the United States District Court
For the Central District of California
Edward Rafeedie, District Judge, Presiding

Submitted September 24, 1999[2]

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4

Before: CHOY, WALLACE, and SKOPIL, Circuit Judges

Taxpayer Abd El-Hamid A. El-Fadly appeals pro se the district court s ruling that he is not entitled to claim head-of-household filing status for taxable years 1991 and 1992. He also contends that the district court erred by refusing to seal his tax returns, denying his motion to compel discovery, and rejecting his request that the government attorneys be sanctioned. We have jurisdiction pursuant to 28 U.S.C. 1291, and we affirm in part and reverse in part.

**DISCUSSION**

1. Head-of Household

El-Fadly filed amended tax returns for 1991 and 1992, seeking to change his filing status from single to the more favorable status head-of-

household. To qualify for head-of-household status, El-Fadly was required to demonstrate that (1) he was not married during the relevant tax year; (2) that he did not qualify as a surviving spouse; and (3) that he maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, a son. See 26 U.S.C. 2(b)(1). Thus, there is a requirement that a taxpayer s dependent actually live with taxpayer in order for the taxpayer to qualify for head-of-household filing status. See Prendergast v. Commissioner, 483 F.2d 970, 971 (9th Cir. 1973).

The record discloses that El-Fadly s son did not live with him

during 1991 or 1992. Rather, after El-Fadly s divorce from his wife in 1988, the son lived with his mother in Egypt. We reject El-Fadly s contention that entitlement to a dependency exemption alone is sufficient to confer head-of-household status. We also reject El-Fadly s contention that his son was temporarily absent due to special circumstances. See Tres.Reg. 1.2-2(c)(1) (providing for preservation of head-of-household status if dependent s temporary absences from the household [are] due to special circumstances ). Thus, we affirm the district court s ruling that El-Fadly is not entitled to head-of-household status for tax years 1991 or 1992.

2. Motions to Seal, Compel, and Impose Sanctions

El-Fadly argues that the district court should have sealed his tax returns to protect his privacy. Although tax returns are confidential, see 26 U.S.C. 6103, once tax return information enters the public domain, the taxpayer may no longer claim a right of privacy in the information. See William E. Schrambling Accountancy Corp v. United States, 937 F.2d 1485, 1490 (9th Cir. 1991); Lampert v. United States, 854 F.2d 335, 337-38 (9th Cir. 1988).

El-Fadly sought to compel declarations from IRS employees to determine why he was allowed head-of-household status for some years but not for 1991 or 1992. The government responded that although El-Fadly claimed head-of-household status for other

taxable years, he was neither audited nor did he amend his returns for those years. We conclude that the district court did not err in refusing to compel discovery.

It is well settled that the Commissioner s failure to challenge a taxpayer s treatment of an item in one taxable year is irrelevant to the determination of the proper treatment of a similar item in a different tax year. Little v. Commissioner, 106 F.3d 1445, 1453 (9th Cir. 1997).

Finally, the district court properly rejected El-Fadly s request for sanctions against the government attorneys on the ground that he failed to substantiate his allegations of wrongdoing. Even on appeal, El-Fadly merely asserts that the government attorneys were not honest, fair, or straightforward because they refused to agree that he was entitled to

the head-of-household status.

3. Remand

The government submits that a remand is necessary to allow the district court to amend its judgment to reflect the parties stipulation that El-Fadly is entitled to additional mortgage interest, cash charitable contributions, and a dependency exemption for his son. Rather than a remand, we accept the government s confession of error and reverse that part of the district court's judgment. The district court should amend its judgment upon issuance of our mandate consistent with the government s concession.

**AFFIRMED** in part; **REVERSED** in part. Each side shall bears its own costs of appeal.

APPENDIX D

FILED
DEC 27, 1999
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| ABD EL-HAMID A. EL-FADLY, Plaintiff-Appellant, v. INTERNAL REVENUE SERVICE, Defendant-Appellee. | No. 98-56348<br>D.C. No. CV 97-3681 ER<br>ORDER |

Before: CHOY, WALLACE, and SKOPIL, Circuit Judges

The panel has voted unanimously to deny the petition for rehearing. The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on

whether to rehear the matter en banc. See Fed. R. App. P. 35. Accordingly, the petition for rehearing is DENIED and the petition for rehearing en banc is DENIED.